

This letters discusses issues regarding when printers of carded packaging may provide their suppliers with Certificates of Resale for purchases of tangible personal property that they will transfer to customers. See 86 Ill. Adm. Code 130.2070, 86 Ill. Adm. Code 130.2000 and 86 Ill. Adm. Code 140.101. (This is a GIL).

October 18, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 7, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are an Ohio corporation and have recently acquired a production facility in the Chicago area and we are trying to arrive at the proper procedure for collecting certificates from our customers. We are currently registered in the State of Illinois with the following information:

NAME/ADDRESS

The company we acquired on January 1, 2000, is of the following address:

ADDRESS

The acquired production facility currently prints carded packaging. Our products are shipped to other manufacturers which use our printed carded packaging to package their end product for resale. Our product is of no use to an end consumer.

I have had three phone conversations with Department of Revenue agents from the State of Illinois. My most recent conversation was with Mitzi Brandenburg on June 16, 2000. Each agent has cited various sections of the regulations (130.2070 – 130.1405 – 130.210, etc.) indicating that we should not be required to collect certificates since our products are not suitable for resale. They have made us aware that our conversations are not rulings and the only clear answer would have to come from a private letter ruling since the regulations relating to the subject matter are open to interpretation.

Our confusion lies with the acquired company's actual experience of a field audit in 1995. According to the management of the acquired company, they were subjected to

a sales tax audit and an agent was on their premises conducting the audit. The management of the company explained the business operations and gave the agent a tour of the facility to help explain the products. The field auditor insisted that the company collect resale certificates even after learning that the products manufactured were not suitable to an end consumer or for resale. The management of the acquired company explained they felt the auditor categorized the business improperly as a commercial printer which could produce products for an end consumer or for resale.

We want to make sure our production facility is in compliance with the Retailers' Occupation Tax and wish to draft an internal policy regarding the necessity of collecting certificates from the purchasers of our products. To the best of our knowledge the Department has not previously ruled on this issue for our company or the acquired company.

Your recommendation would be appreciated on providing us with our responsibilities on collecting certificates and the burden of proof associated with each option available to us. Should you have any questions or concerns, please feel free to call me at #####. Thank you for your help in this matter.

Your question is complicated. Without more information, we are unable to tell you whether or not you should collect resale certificates. We hope the following information will be useful to you in making that determination.

Chapter 86, Section 130.2070 of the Illinois Administrative Code sets out when packaging materials and container may be sold without incurring Retailers' Occupation Tax liability. Packaging materials may be sold without incurring Retailers' Occupation Tax liability if the packaging materials are sold for resale and ownership of those materials is transferred with the ownership of the tangible personal property contained in them. See part (b) of the enclosed copy of Section 130.2070. The purchaser of these packaging materials must the supplier with a Certificate of Resale that contains the information listed in part (b) of the enclosed coy of 86 Ill. Adm. Code 130.1405.

If ownership of the packaging materials is not transferred with the tangible personal property contained in them, then those materials were purchased for the seller's use and consumption and not for resale. See part (c) of Section 130.2070. An example would be a seller providing pallets for transportation that are returned to the seller after their use.

Whether a label can be sold tax exempt as a sale for resale depends upon whether the label can be considered a part of the packaging. A label is considered part of the packaging when it is primarily of benefit and utility to the ultimate purchaser of the item to which the label is attached. However when the label is primarily for the benefit of the seller of the item, the label is taxable. For example, price tags and bar code labels are primarily for the benefit of the seller and cannot be purchased for resale. Labels that list ingredients, consumer information, or cooking or storage instructions are for the benefit of the purchaser and may be purchased for resale.

Chapter 86, Section 130.2000(c)(1) provides that “[a] photostater...or a printer who is employed to print material for his customer in accordance with copy supplied to the printer by the customer or otherwise in accordance with the customer’s specifications and special order, or a person who otherwise engages primarily in the transaction in furnishing graphic arts’ services is not engaged in such transaction in the business of selling tangible personal property within the meaning of the Act, if the item so produced does not serve substantially the same function as stock or standard items of tangible personal property that are sold at retail, but is engaged in such transaction primarily in a service occupation.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers’ Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these two methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers’ Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers’ Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual

gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen pay Use Tax to their suppliers on their cost price of the tangible personal property transferred to service customers incident to sales of service. If their suppliers are not registered to collect and remit tax (i.e. they are out-of-State unregistered suppliers), the servicemen register to self-assess and remit Use Tax to the Department. Such servicemen are not authorized to collect "tax" from their service customers, are not liable for Service Occupation Tax, and may not provide Certificates of Resale to their suppliers when purchasing tangible personal property that they will transfer to their customers.

We cannot determine from the information in your letter how the taxpayer is registered. As you can see, this factor is important in determining a serviceman's liability.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.